

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.5714 of 2013
Date of decision:06.02.2015

Harbhajan Singh & another

....Petitioners

Versus

Gurmail Singh & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Gurcharan Dass, Advocate, for the petitioners.

Mr.Harshit Jain, Advocate, for respondents No.1, 3, 5 & 6.

Mr.Rajbir Singh, Advocate, for respondent No.2.

Ms.Tanya Malik, Advocate, for
Mr.Tarunveer Vashisht, Advocate, for respondent No.4.

G.S.Sandhawal J.(Oral)

Challenge in the present revision petition is to the order dated 16.07.2013 (Annexure P6), filed by the plaintiff-petitioner, whereby the application for appointment of Local Commissioner has been rejected by the Addl.Civil Judge (Sr.Divn.) Sangrur.

The reasoning given by the Trial Court is that the suit was based on the demarcation report dated 01.04.2010 (Annexure P7). It was noticed that to prove the said report, even the Field Kanungo, Narinder Pal Singh, was summoned as PW2 and he had exhibited the report as Exhibit P1. He was partly cross-examined by defendants No.2, 5 & 6 and his cross-examination on behalf of defendants No.1 and 3, was deferred due to non-availability of the counsel and the application was further filed for appointment of another Revenue Officer as per the FCR guidelines and to submit a report. The said application was contested on the ground that once the demarcation report itself has been relied

appointed.

Counsel for the petitioners has vehemently placed reliance upon the judgment of the Apex Court in **Shreepat Vs. Rajendra Prasad & others 2000 (7) JT 379** to contend that in cases of dispute of the identity of the property and since it was a case of encroachment, the Local Commissioner should have been appointed.

After hearing counsel for the parties, this Court is of the opinion that firstly, it is settled principle that against an order declining the appointment of a Local Commissioner, a revision petition is not maintainable. Two Division Bench judgments of this Court have held to the said effect in **Harvinder Kaur Vs. Godha Ram ILR 1979 (1) P&H 147** and **Pritam Singh & another Vs. Sunder lal & others 1990 (2) PLR 191**. The said view has also been followed by two Single Judge Benches of this Court in **Sumer Chand Jain Vs. Vishnu Bhagwan Mangla 2006 (2) RCR (Civil) 445** and **Rajiv Kumar Batra Vs. Kashmiri Lal Sika**, to the effect that merely because a revision petition has been filed under Article 227 of the Constitution of India, the binding precedent of the Division Benches cannot be wished away.

The second reasoning on the merit also, this Court is of the opinion that once the suit had been filed on the basis of the demarcation report, the petitioners cannot, now, turn around and pray for appointment of another Local Commissioner. If the report was not correct, as alleged, the petitioners should have got another demarcation conducted before filing of the suit.

In such circumstances, no reason for interference is called for in the well reasoned order passed by the Court below and consequently, the present revision petition is, hereby, dismissed.

06.02.2015

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SAILESH RANJAN
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I attest to the accuracy and
integrity of this document

(G.S.SANDHAWALIA)
JUDGE